HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.14193 OF 2007

Between:

M.Venkaiah

. . .Petitioner

AND

The Ongole Municipality and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri V.Anjaneya Raju

5th July, 2007

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Per G.S.SINGHVI, C.J.

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issue of a mandamus to respondent No.1 to remove the alleged unauthorised construction made by respondent Nos.2 and 3 on the road margin and the compound wall of his house.

In the affidavit filed by him, the petitioner has averred that respondent Nos.2 and 3 have erected one thatched house and one asbestos sheet house near the compound wall of his house on the road margin, and despite representations made to the authorities of respondent No.1, no step has been taken to remove the unauthorised structures.

We have heard Sri V. Anjaneya Raju. In our opinion, the writ petition is liable to be dismissed because the petitioner has not produced any material to prima facie establish the allegation that respondent Nos.2 and 3 have illegally occupied the road margin and raised unauthorised construction near the compound wall of his house. The sketch plan – Annexure P2 produced by the petitioner is not a document authenticated by any public authority. Therefore, the same cannot be made basis for recording a finding that respondent Nos.2 and 3 have occupied the road margin and raised unauthorised construction. Representation dated 7-3-2007 submitted by the petitioner to the Commissioner, Ongole Municipality is extremely vague and does not give any indication of the time of the construction allegedly made by respondent Nos.2 and 3 and its nature. Therefore, we do not find any justification to entertain the writ petition and direct

respondent No.1 to demolish the alleged unauthorised construction made by respondent Nos.2 and 3.

There is one more reason for our disinclination to entertain the prayer of the petitioner. The determination of the question whether respondent Nos.2 and 3 have encroached the road margin and have raised unauthorised construction necessarily involves investigation into issues of fact. Such issue can be decided only after giving opportunity to the parties to lead evidence. The civil court, and not the High Court, is an appropriate forum for this purpose. Therefore, the petitioner should have, instead of filing writ petition under Article 226 of the Constitution of India, availed remedy by filing civil suit, which, in the facts and circumstances, must be treated as an effective alternative remedy.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.17813 of 2007 filed by the petitioner for early hearing the petition is disposed of as infructuous.

G.S.SINGHVI, C.J.

5th July, 2007

C.V.NAGARJUNA REDDY, J.

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